

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
)
v.)
)
MARK HAZELWOOD,)
SCOTT WOMBOLD,)
HEATHER JONES, and)
KAREN MANN,)
)
Defendants.)

**No. 3:16-CR-20
JUDGES COLLIER / GUYTON**

**SENTENCING MEMORANDUM ON BEHALF OF
MARK HAZELWOOD**

September 12, 2018

WALDEN MACHT & HARAN LLP

Jim Walden
Georgia Winston
1 Battery Park Plaza, 34th Floor
New York, NY 10004
Tel: (212) 335-2030
Fax: (212) 335-2040

BREEDING HENRY BAYSAN PC

Bradley L. Henry
900 S. Gay Street
Suite 1950
Knoxville, TN 37902
Tel: (865) 670-8535
Fax: (865) 670-8536

Attorneys for Mark Hazelwood

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PERSONAL HISTORY AND CHARACTER.....	3
A.	Mark's Family, Childhood and Education	4
B.	Mark has Consistently Strived to Help Trucking Companies and Truckers.....	5
C.	Mark is Exceptionally Devoted to His Family.....	11
D.	Mark's Generosity and Kindness	13
E.	Mark's Devotion to His Faith and His Principles	22
F.	Mark is Tolerant and Respectful to All.....	23
III.	CONCLUSION.....	25

I. INTRODUCTION

Mark Hazelwood respectfully submits this memorandum and accompanying letters to assist the Court in determining the appropriate sentence to impose at his upcoming sentencing.

This submission offers a truer and more complete narrative of Mark's personal history and character than that advanced by the government at trial, which, among other things, cynically attempted to portray Mark as greedy and, worse, a racist. It is indisputable that during Mark's 30 years in the trucking industry, he did a tremendous amount of good—for Pilot, its employees and, specifically and notably, its trucking company customers and truckers. Mark's life is likewise replete with remarkable examples of charitable and other good works and deep love, commitment, and support for his family, friends, and the broader community in which he lives. And it is important to add, given the picture of Mark that emerged at trial, that he is a compassionate man, who took in a disadvantaged African-American teen whose mother was ill, paying for his private school education and welcoming him into Mark's home when the boy's mother passed away. To date, the government has narrowly focused on the worst that Mark has said and done. This submission is designed, in part, to give the court a broader sense of the man and his achievements.

Sentencing is an appropriate time to weigh the good with the bad, and we submit that the good that Mark has done throughout his life vastly outweighs the conduct of conviction, which had no material impact on members of the victim class.

This Memorandum should be read alongside two accompanying motions: (1) a Motion for Downward Departure (“Downward Departure Motion”); and (2) a Motion for Downward Variance (“Downward Variance Motion”). *See* Local Rule 83.9(j) (allowing motions for departures and

variance within 14 days of sentencing).¹ In this Memorandum, we discuss Mark's personal history and character.

Mark has no criminal history, nor anything in his past suggesting a tendency toward criminality. To the contrary, Mark has led an exemplary life. Starting more than 30 years ago, Mark—lacking any college education—worked hard to better himself and provide for his family. Indeed, Mark is a consummate family man. He is a loving husband to his best friend and partner, Joanne, and a devoted father of three children—Asa, Ashley, and Parker—and a fourth, Jessie, whom he lost tragically in a car accident when she was 16. Despite a demanding job, Mark has always been present as a source of emotional support and guidance for his family. He has taken each and every one of them into his heart and has devoted himself to them. And Mark's generosity of spirit extends far beyond his immediate family. Mark treats everyone like family. As the letters submitted in his support show, Mark never ceases to give—to organizations seeking to bring joy to chronically ill children, to hospitals and research facilities working to cure and care for the sick, to organizations providing funds for those in need, and to parents seeking to adopt, just to name a few. He gives to friends and even strangers in their times of need, without hesitation and without their having to ask. He gives with a true sense of philanthropy, not for recognition or accolades.

¹ The Downward Departure Motion addresses the advisory Sentencing Guidelines. The Variance Motion discusses and applies the general sentencing factors under 18 U.S.C. § 3553(a), arguing that a Guidelines-range sentence is far greater than necessary to accomplish the sentencing objectives set forth in that section and that a non-custodial sentence of probation with home detention and financial penalties suffices to do so. See e.g., Sentencing Memorandum, *United States v. Dobson*, No. 1:12-CR-42 (E.D. Tenn. Jan. 9, 2014) (J. Collier), ECF No. 139; Motion for Downward Departure, *id.* (Jan. 9, 2014), ECF No. 140; Motion for Downward Variance, *id.* (Jan. 9, 2014), ECF No. 141; see also *United States v. McElheney*, 524 F. Supp. 2d 983, 985 (2007) (noting defendant separately filed a motion for downward departure/variance, a sentencing memorandum, and three supplements to the sentencing memorandum) (J. Collier).

He also has been dedicated to the trucking industry and those who work in it, including and especially the truckers who spend long, hard hours on the road. As his longtime friend Thomas Albrecht puts it, “Mark is a giant of a human being.” (Ex. A, Tab 1.)²

We are mindful of the fact that, when sentencing white-collar defendants in other cases, this Court has been skeptical, and maybe even dismissive, of such arguments. However, many district and appellate courts command that sentencing courts evaluate and credit genuinely philanthropic and benevolent conduct, such as Mark’s. This is especially appropriate here because Mark is not a privileged person who had opportunities laid at his feet. He worked—and worked very hard—for his opportunities, and he created many opportunities for others along the way. We respectfully submit that the evidence described below shows that Mark is a true outlier among white-collar defendants, with a longstanding and genuine record of empathy and compassion that commands recognition at this sad phase of his life, especially since he maintains his innocence and recently discovered exculpatory evidence that supports his fair protestations.

After the Court reads this and the two companion submissions, we hope the Court will agree that the conduct for which Mark was convicted stands in stark contrast to the overwhelming amount of good he has done in his life—marked by hard work, meaningful and cost-saving innovations for the trucking industry and truckers, devotion to friends and family, philanthropy, and love of God.

II. PERSONAL HISTORY AND CHARACTER

Especially when the defense fails to present its side of things, criminal trials focus on the

² Attached hereto as Exhibit A are all character letters cited within this Sentencing Memorandum, in the order in which they are cited. Attached hereto as Exhibit B is an additional set of character letters, listed in alphabetical order by last name. While we were only able to include so many letters within this 25-page memorandum, we hope the Court considers all 161 letters written in support of Mark.

worst of a person. An observer of the trial in this case would have come away with the impression that Mark was a bad man—a profit-driven, greedy executive, and a racist to boot. The reality is that, throughout his life, Mark has shown himself to be very much the opposite of this: a principled, generous, and tolerant man, who cared deeply about others, including his customers. Mark is a man who has lived, other than this conviction, an irreproachable life.

A. Mark's Family, Childhood and Education

Mark grew up in a large family, the youngest of six children. (Ex. A, Tab 2.) His father was a U.S. Navy Veteran and his mother was a waitress—later a restaurant manager—at a truck stop. Mark's parents instilled in him strong values, including the importance of helping others, which he put into practice from an early age. From his parents, Mark also “learned the meaning and value of hard work at a young age.” (Ex. A, Tab 3.) Mark's lifelong friend, whom he met when he was 8 years old in his small town of Lewisburg, Ohio, explains, “He started working at a local truck stop at the age of fourteen.” (*Id.*) He tirelessly worked every job imaginable—pumping gas, cooking food, washing dishes, working the cash register. “Because of Mark's family instilled work ethic, he work[ed] hard and through his efforts he moved up to assistant manager at the age of nineteen.” (*Id.*) It was this first job that launched Mark's successful career in the trucking industry. Choosing that career path was not just a business decision for Mark, it was his passion.

Remarkably—but no doubt thanks to the real-world lessons he learned from his parents—Mark achieved his great success without a college education. His daughter Ashley writes with pride that her “dad worked his way up to President of Pilot Flying J without a college education.” (Ex. A, Tab 4.) Mark's close friend, Bruce Pearl, described it this way: “No silver spoon, no country club connections, just good old fashion hard work! He built relationships and trust!” (Ex. A, Tab 5.)

In the process, as part of a life well-lived, he created jobs for thousands of people, treated

Pilot's trucking company customers and truckers with deep respect, saved them considerable sums through his innovations (indeed, as we explain below, the amount of transaction fees Mark saved all trucking companies through his direct-billing innovation, standing alone, dwarfs the loss amount in this case), and has been able to make significant contributions to less-fortunate people.

B. Mark has Consistently Strived to Help Trucking Companies and Truckers

Mark is a pioneer in the trucking industry. He "played an integral role in transforming Pilot Oil from a small Knoxville, Tennessee-based company into a multibillion dollar company with worldwide interests. This incredible growth provided for homes, cars, college educations, and security for thousands of Pilot Oil employees." (Ex. A, Tab 3.) As his former colleague put it, "I credit Mark's vision and leadership as a big part of the foundation that saved and paved the way for our employees and company's success." (Ex. A, Tab 6.) But Mark's impact reaches far beyond Pilot. More than anything, "[i]ndustry influencers and leaders will tell you Mark Hazelwood is a champion for trucking – both in the past and today." (Ex. A, Tab 7.) Mark grew up around truckers and has the deepest respect for them. Indeed, there is some irony in the fact that Mark stands convicted of participating in a scheme to defraud Pilot's trucking company customers, given that Mark has spent much of his career helping those very people. He brought about a series of changes in the trucking industry that dramatically benefited trucking companies and the individual truckers who work at these companies, and he did so out of a genuine and deep concern for people who work in the trucking industry. As one of Pilot's business partners wrote, "with Mark it was always about what's fair, and what is also in the best interest of all parties involved, especially the customer." (Ex. A, Tab 8.) Mark Lazarus, a long-standing associate of Mark's from the trucking industry, as well as other former colleagues of Mark's, detail some of Mark's more significant innovations:

Mark's Innovations that Benefited Trucking Companies

1. **Direct Bill** – Mark conceived of the method of billing trucking companies directly for fuel purchased at Pilot. It eliminated the \$3.00-\$5.00 fee per transaction that billing companies were charging the trucking companies. That reduction over the last 27 years has saved the trucking companies hundreds of millions of dollars. (Ex. A, Tabs 9, 10.)
2. **Hedging Program** – Mark implemented a hedging program, which paid great dividends for both Pilot and its customers. Pilot would hedge at specific times during the year to lock in prices on fuel to remove the volatility of fuel prices for customers. Much of the savings that Pilot earned on the hedges were then passed on to customers through Pilot's ability to make more competitive deals. (Ex. A, Tab 11.) As John Cosaert, formerly of Heartland Express, explained in his letter: “Pilot was one of the first in the industry to offer carriers workable fuel hedging programs, saving many in our industry thousands if not million dollars.” (*Id.*) In a number of instances when the hedges turned out to not be in favor of the truckers, Mark actually let customers out of their agreements, which is hardly consistent with the man portrayed at trial. (Ex. A, Tab 12.)
3. **Fuel Networks** – Mark educated the trucking companies to direct their drivers to specific truck stops that were on the route they ran. This allowed the trucking company to buy cheaper fuel based on the taxes at different locations. It also allowed the trucking companies to combine their respective gallons to negotiate a better discount at different truck stops and truck stop chains. (Ex. A, Tabs 9, 13.)
4. **Delivery Improvements** – Mark set up a system for drivers to more quickly send Bills of Lading and Proof of Deliveries to their trucking companies. This sped up the ability for the trucking company to invoice their customers and to pay their drivers. (Ex. A, Tabs 9, 11.)

5. **Fuel Discounts** – Mark developed a system to discount fuel prices to the trucking companies through either immediate point-of-sale discounts or by rebate check at the end of the month. Before this, trucking companies did not get discounts from truck stops. This has saved (and continues to save) the trucking industry millions of dollars and forced other truck stop chains to follow suit. (*Id.*)

6. **Diesel Exhaust Fluid (“DEF”) Pumps** – Mark conceived of the idea of providing DEF at the pump rather than requiring drivers to buy 1-5-gallon containers and manually put them in the truck. This innovation not only saved the trucking companies money, but also made it easier and safer to dispense DEF. (Ex. A, Tab 9.)

Mark’s Improvements that Benefited Truckers

1. **Truck Stops** – Mark located and developed over 600 truck stops, creating that many new places for drivers to stop and have a clean, safe place to rest. (*Id.*)
2. **Safety** – Mark has helped to develop and promote technology to collect and transmit safety-and-maintenance-related information from trucks to trucking companies, to help enhance safety and avoid accidents. (Ex. A, Tabs 10, 14.)
3. **Private Showers** – Mark presided over the introduction of private showers at truck stops. This gave respect and dignity to the driver. It allowed them to have a clean and private option to shower on the road free of charge. Prior to this, showers were either not available or were locker room-style group showers. (Ex. A, Tabs 9, 15, 13, 16.)
4. **Fast Food Restaurants at Truck Stops** – Mark brought fast food restaurants to truck stops. This made food more available and affordable to the truck driver. Prior to this the only options the drivers had were to pack their own food or eat at the “greasy spoon” restaurants that were at some truck stops. (Ex. A, Tab 9.)

It is more than a little ironic that Mark has been charged with conspiring to defraud customers using a manual-rebate scheme when he invented the direct-billing approach and encouraged customers to change from manual rebates into direct-billing arrangements, which helped save the trucking industry hundreds of millions of dollars and also created pressure on transaction-processing companies to lower their fees over the years, saving even more money for trucking companies. (Ex. A, Tab 10.) It is also ironic that, after the FBI raid, when Pilot embarked on a campaign to restore its image and make customers whole, it turned to Mark to lead the effort. Mark made personal visits to approximately 700 customers in the period between April 22, 2013 and May 2014, to assure them that Pilot would not only make them whole but reform its practices. As result of Mark's efforts, almost every customer stayed with Pilot. (Ex. A, Tab 15.)

Since leaving Pilot, Mark has continued to devote himself to improving the trucking industry and the lives of those who work in it. (*Id.*) He "started a company to help recruit drivers as well as retain their current drivers," which "will help with the current driver shortage." (Ex. A, Tab 9.) He has created a trucking advertising and marketing company aimed at helping to "improve and promote the conception of trucks and truck drivers and improve the perception of the trucking industry." (*Id.*; *see also* Ex. A, Tab 7.) And he has worked to "upgrade Mud Flaps to improve fuel economy and safety for the driver and motoring public." (Ex. A, Tab 17; *see also* Ex. A, Tabs 9, 18.)

It is really *people* Mark cares about, and truckers are particularly important to him. "He cared about truck drivers." (Ex. A, Tab 19.) He worked tirelessly during his career to promote respect for truckers, to improve facilities, and to encourage his employees to be a friendly face when truckers stopped to fuel their trucks. He has spent countless hours thinking of ways to improve their lives and make their jobs safer. U.S. Xpress Enterprises, Inc.'s Executive Chairman,

Max Fuller, writes:

While it is perhaps easy to look at his convictions and conclude that Mark's only concern was profits, in truth he had a vision for the industry that extended far beyond profits and he worked tirelessly to provide the drivers of our nation with quality, safe and clean facilities to make their lives easier over the road.

(Ex. A, Tab 17.)

Mark has not just supported truckers; he has supported the trucking companies for whom they work. He has gone above and beyond throughout the years to help Pilot's trucking company customers. As the Chairman of longtime customer Knight-Swift Transportation puts it, "Mark has always been a huge supporter of our industry and our drivers . . . The trucking industry as a whole would not be where it is today without Mark Hazelwood." (Ex. A, Tab 20.) And Darron Ming explains that, when Darron was working as Controller of USA Truck, Mark "always went above and beyond to ensure [his] company was successful." This included spending "several hours on the phone . . . explaining in detail how [fuel hedging] would work" so that Darron could explain it to his Board. (Ex. A, Tab 21.) David Jackson, President and CEO of Knight-Swift Transportation, wrote that Mark "seemed to never forget his own personal humble beginnings as manifested in how considerate he always was towards the truck drivers away from home that frequented truck stops." Jackson added "such personal interest in the drivers is not common among the other suppliers we work with." (Ex. A, Tab 22.) Mark would help customers in need even when it came at a significant cost to Pilot. As one of his former colleagues recounts, when some customers got into trouble by hedging fuel purchases before a big drop in prices, Mark let them "renegotiate their deals costing Pilot hundreds of thousands of dollars on each customer." (Ex. A, Tab 12.) Mark even took money out of his own pocket to help some customers in desperate straits. He "provided personal funds on an unsecured basis at a time when Swift's survival was very much in doubt, and his doing so saved the nation's largest truckload carrier and 25,000 jobs." (Ex. A, Tab 23.)

Mark has been known throughout the industry as a principled and considerate businessman. Cari Baylor, owner of Baylor Trucking Incorporated (one of Pilot's customers), cites Mark as one of "several inspirational hard-working leaders" in her life: "my Papa, my Dad, my high school principal, and Mark Hazelwood." (Ex. A, Tab 24.) Another customer, David Parker of Covenant Transport, recalled how Mark went out of his way to help Parker's company in a time of need when it was "losing money and Mark assisted us tremendously His word was always his bond, and I never doubted it." (Ex. A, Tab 25.) Mark's professionalism and respect extended even to customers who took their business to competitors. Darron Ming recalls that, on one occasion, "I made the decision to move 500,000 gallons from Pilot Flying J to one of their competitors. I remember getting a phone call from Mark and rather than being angry with me he wanted to thank me for the business they still had." (Ex. A, Tab 21.)

Among many who have long experience with Mark in business matters, Mark is known as a person of integrity, even despite the conviction.³ Andre Johnson, a lawyer who frequently worked with Mark, wrote that "at all times I witnessed Mark work with integrity and never observed anything but the utmost professionalism. In fact, I have always been instructed by Mark to make every agreement fair and equitable even when it could potentially impact him negatively." (Ex. A, Tab 26.) Mark's business partner and former vendor, Kelley Walkup, writes that she has "always experienced nothing but the highest of ethical business practices in [her] dealings with Mark." (Ex. A, Tab 7.) Roy Dobrasinovic, whose company is an alleged victim in this case, writes, "All of my business dealings with Mark have been above board and conducted with great integrity. He has always been honest with me." (Ex. A, Tab 27.) Indeed, the former head of Sales

³ We offer this information in the hope that the Court will see the offense conduct as an anomaly in a career filled with sound business judgments and ethical behavior.

for Pilot (before the merger with Flying J) also attested, based on his substantial experience with Mark, to Mark's high-minded principles and ethics: "I have always known [Mark] to be ethical and he never asked me to do anything that I felt uncomfortable doing or that I thought was wrong." (Ex. A, Tab 10.)

C. Mark is Exceptionally Devoted to His Family

Some successful businessmen neglect their families on the path to success. Not Mark. Mark has always remained grounded and has been a constant source of support for his family. He has three biological children, Asa, Ashley, and Jessie, along with a step-daughter, Parker. Although (as discussed elsewhere) Jessie died tragically at the age of 16, Mark is intimately involved in the lives of his other children to this day, as he was with Jessie's during her all-too-brief life. Mark "is a great father and husband and there simply isn't anything he would not do for his family. In a world that has so many absentee fathers, Mark has been a rock to his immediate family, extended family and many others that he has treated as family along the way." (Ex. A, Tab 28.)

Mark's love for his family is returned in kind. Mark's son, Asa, credits his father for teaching him "unconditional love, generosity, and compassion." (Ex. A, Tab 29.) Despite his hectic business schedule, all of Mark's children remember that their father always made time for them and put family first. Whether that was making sure he could attend his children's sporting events, supporting them during their joys and sorrows, or simply cooking a meal for them, he made sure he was there for them. (Ex. A, Tab 4.)

Mark's stepdaughter, Parker, met Mark when she was 6 years old, and she is just as much Mark's child as his biological children. When Joanne and Mark married, Parker "was the only one of Mark's children left at home." (Ex. A, Tab 30.) Because her step-siblings had moved away, Parker "was lucky enough to get to spend [her] time with Mark and [her] mom." (Ex. A,

Tab 30.) Parker's love for Mark, and his for her, was beautifully demonstrated when, at her wedding, the "most important moment of [her] life, she was "escorted by [her] two fathers," Mark and her biological father, down the aisle. (Ex. A, Tab 30.)

But the joy of being a father also sometimes comes with pain, and Mark has been confronted with the unbearable pain of losing a child. When Jessie was 16 years old, she passed away as a result of a terrible car accident. Her passing was devastating for everyone—but especially for Mark. A father's love for his daughter is special, and Mark endured an unspeakable tragedy. But he took the sourest lemon life has to offer and turned it into something resembling lemonade. The memory of Jessie lives on in Mark, and he shares her light with those who he knows. He helps other parents who have lost a child or are at risk of losing a child by sharing his story in hopes that it may ease the pain, if only a little. He offers a helping hand and an ear to listen as they grieve. Mark's brother-in-law recounts Mark's thoughtfulness when his own teenaged daughter (Joanne's niece), Emily, passed away a few years ago:

When my daughter passed away, the funeral director who was handling the arrangements, informed me that Mark had been in contact regarding payment of the expenses should it turn out we needed financial assistance. The gesture alone was very meaningful to me. I appreciated Mark reaching out to me and sharing his feelings of pain. A pain you would not wish on anyone. Mark was thoughtful enough to remember the anniversaries of my daughter's death, her birthdays and all holidays where her absence was so painfully missed.

(Ex. A, Tab 31.)

But Mark's dedication to Emily and her family began much earlier. When Emily was in the hospital undergoing a bone marrow transplant after a cancer relapse, "Mark was there to support us." (Ex. A, Tab 32.) Doing so was especially hard for Mark because it was near the anniversary of Jessie's death. As Mark's sister-in-law writes, "I can only imagine how terribly difficult this must have been for him after having just lost his own daughter." (Ex. A, Tab 32.)

But Mark put those feelings aside in order to help others in need.

Mark is happily married to Joanne, his second wife. As Joanne described him, Mark is “my best friend, my soul mate, my business partner and my confidant.” (Ex. A, Tab 15.) Joanne and Parker remain close with Joanne’s former husband, who (after their divorce) announced his homosexuality and is now in a committed relationship with an African-American partner. (Ex. A, Tab 15.) Mark has welcomed and embraced his non-traditional family, and they adore and rely on him. “When he looks at his family, his face lights up. You can’t fake joy. He is so proud of his family and so in love with all of them. They all look back at him the same way.” (Ex. A, Tab 33.)

D. Mark’s Generosity and Kindness

Mark’s caring and generosity is not limited to his family and the trucking community. Throughout his life, he has been devoted to caring for and helping others. This fundamental generosity of spirit has manifested in numerous ways, large and small: (a) through donations, fundraising, and smaller-scale generosities that have profound impacts on their recipients, and (b) with his substantial time, unrelenting effort, limitless compassion, and care that he shows toward the various people who cross his path—including friends and strangers alike. Mark is “truly passionate about people and giving back.” (Ex. A, Tab 34.) He “has always given freely to charities and good causes.” (Ex. A, Tab 35.)

As many people have recounted in their letters in support of Mark, giving is central to who Mark is. After the death of his daughter, Jessie, Mark chose to honor her memory by helping other children and sharing Jessie’s love of horses through the Victory Junction Camp in North Carolina. Kim Burnette, a family friend who trained Jessie in horse riding, recounts the genesis of this project:

Through this horrific loss, Mark kept Jessie’s memory alive with his charity work, one being the “Victory Junction Gang Camp”. In Jessie’s memory, he built a barn filled with horses and animals at the camp called “Jessie’s Horsepower Garage”.

This was not an ordinary barn; it was magnificent and designed so that every child no matter what their illness, disability, or battle could experience the same love of horses Jessie had shared during her short time on earth. For horse lovers it was like a Disney Village . . . there are no words to describe the detail he put into it.

(Ex. A, Tab 34.) Mark “never once asked for a thank you or press coverage of any kind” in return for his extraordinary contributions to Victory Junction. (Ex. A, Tab 36.) He did it to help.

When his niece Emily died, Mark honored her memory by again giving to help others. Since Emily’s death, Mark has supported St. Jude Children’s Research Hospital in Emily’s name. (Ex. A, Tab 37.) He has done so both by direct donations and by calling upon his industry contacts to donate, as a result of which, “hundreds of thousands of dollars were raised.” (Ex. A, Tab 32.)

Mark has provided this kind of selfless assistance again and again. When he hears of another’s loss, he gives. When his friend Stoney Stubbs lost his son to an accident, Mark donated \$10,000 in his son’s name to “help build a gymnasium at a boy’s club in Dallas, and \$5,000 to create a scholarship” in his son’s name at the Truckload Carriers Association. (Ex. A, Tab 35.) The very first night he met Michele Wanger, he learned of her son’s rare disease, Sturge-Weber Syndrome. As Michele recounts it:

Once our meal ended and we proceeded to walk out of the restaurant, Mark discreetly slipped me a check for \$5,000 as a donation to the Sturge-Weber Foundation. This came as a complete shock; then it was my turn to shed tears. My son’s neurological disease is very rare, and there is limited funding provided to the medical field to research his condition. The Hazelwoods have continued their incredible generosity and thoughtfulness even today despite all that they have been going through. They have not stopped thinking of my son and the desperation we feel as parents to find help for these children.

(Ex. A, Tab 38.)

When Mark hears of a friend or family member helping a cause or a charity, Mark’s immediate instinct is always the same: to help. When he learned that his friend Kim Burnette was helping to produce a horse show, “The Gallop in the Glen,” designed to benefit Knoxville charities,

he immediately set out to help, “calling on many of his business associates and colleagues” and helping to “put together a charity event that left the horse show world amazed.” (Ex. A, Tab 34.)

As Kim writes:

We were able to give an unheard of amount of money to our area, including Baptist Hospital and Mercy Health Systems, along with several other local charities. This could have never happened without Mark. He led the charge and loved seeing everyone bond together and give back to a community he was so proud of. He is truly passionate about people and giving back.

(Ex. A, Tab 34.)

When Kim formed a non-profit to help Gulf-region animals endangered by Hurricane Katrina, Mark was there to help again, making sure his friend had fuel and helping her get donations to buy food and supplies for the animals. (*Id.*) And recently, Mark helped his niece, Catherine, to “purchase entire class sets of books to support a Civil Rights curriculum” for both her class and “the entire 3rd grade” at the school where she teaches. (Ex. A, Tab 39.) He “donate[d] thousands of dollars to the general TCA Scholarship fund each year at the annual fundraising gala.” (Ex. A, Tab 35.) He supports Wreaths Across America, a group whose “mission is to put a wreath on every veteran’s grave in the United States two weeks before Christmas. With Mark’s help, the number of graves covered with wreath[s] has increased dramatically over the last five years.” (Ex. A, Tab 35.) He supports the “Evening in Orange,” an event that benefits the Cancer Institute at the University of Tennessee Medical Center. (Ex. A, Tab 40.) As Reverend George Doebler, special advisor to the University of Tennessee Medical Center, notes, Mark’s “support of the University of Tennessee Medical Center and our Pastoral Care Department have been especially helpful,” since Mark “has helped raise monies for the hospital and what it does for our community and state.” (Ex. A, Tab 41.)

Mark’s giving spirit can also be intensely personal and direct. When Tyra Patterson, a

personal assistant to a colleague, became very ill, Mark made a very generous gift to a collection for her medical expenses. The woman’s “husband was so touched by Mark’s generosity that he asked Mark to speak at [her] funeral.” (Ex. A, Tab 42.)

The list goes on. Mark supports the Camp Koinonia Foundation for disabled children and the American Cancer Society. He raised “a record amount of money for the Juvenile Diabetes Foundation event.” (Ex. A, Tab 40.) He gives to the Boys and Girls Club, The L5 Foundation, The Vatican, Ohio State University, the Jimmy V Foundation, and Knoxville Museum of Art. (Ex. A, Tab 43.) After the federal investigation into Pilot began, when many people in his shoes may have been inclined to be more guarded with their money, Mark has continued his long and established history of generosity. (Ex. A, Tabs 43-45.) A list of charities and organizations to whom Mark has donated over the years is attached as Exhibit C.

Mark gives without being asked. He “is always willing to give financially to support these missions and he absolutely exceeds my expectations 100% of the time. I’ve never had to ask him one time to support these philanthropic missions, he just jumps in and asks how he can help without hesitation.” (Ex. A, Tab 46.) As the President of Le Moyne College, a Jesuit institution in Syracuse, put it, “I often refer to Mark as an exemplary example of compassion as I engage in philanthropic activities with our alumni around the world.” (Ex. A, Tab 47.)

Mark does not support these causes to get accolades or recognition—he simply wants to help. Many times, “Mark would donate anonymously. He didn’t care for the recognition, he simply wanted to help the community and make a difference, no strings attached.” (Ex. A, Tab 48.) Mark’s stepdaughter Parker gives one example:

Years ago, we’d been invited to attend a fundraiser for a charitable organization named Hope in The Dark. The organization offers a grant for parents looking to adopt children. The end of the night neared, and the total amount of the grant still had not been met. The director of the organization came to the microphone with

an exciting announcement. “An anonymous person has donated the remaining balance for the grant. The Jewett family has now received the full amount and will be issued the Show Hope grant to be able to adopt their baby girl, Lydia.” The crowd looked around and whispered to themselves. Who was this mystery donor? I think you can use your imagination to realize who this anonymous donor was. Mark has never publicly admitted he was the anonymous donor, but he was in fact the mystery man. A few years down the road, my mother received a call from the director of the organization. It turned out the little girl who was adopted ended up starring in the award-winning film, *Hidden Figures*.

(Ex. A, Tab 30.)

When Mark does speak about his contributions to charitable organizations, it is both because he cares deeply about them and so that others might be inspired to help as well. Numerous letter writers have described his work on behalf of Victory Junction and St. Jude’s. Mark’s outspoken passion for these causes has inspired others to volunteer and donate. Every year, he makes donations in his sister’s name to St. Jude’s and to Victory Junction. (Ex. A, Tab 2.) And it is common knowledge among Mark’s family that if they “want to send Mark a present for an occasion, it is best done [through] donating to either of these organizations.” (Ex. A, Tab 37.) Mark tries to use “his influence to encourage other[s] to be equally philanthropic.” (Ex. A, Tab 17.) So, when the East Tennessee Chapter of the Juvenile Diabetes Research Foundation honored Mark as its “Man of the Year,” Mark “used the honor to advocate for children afflicted with diabetes and solicited numerous additional donations from his friends and business associates around the country.” (*Id.*)

In this mission, Mark succeeded, as his charity has inspired others. Inspired by Mark’s involvement with Victory Junction Camp, Taylor Grant, the daughter of a family friend, led “a major fundraising effort at her high school, raising over \$200,000 for Victory Junction.” (Ex. A, Tab 49.) Taylor went on to work as a counselor there for three summers and has herself been dedicated to helping others. (Ex. A, Tab 50.) As Taylor’s mother explains, the experience:

was life-changing for her, to say the least. Mark set an example of how to give back to others. He supported my daughter's efforts by providing guidance and encouragement in her journey. He was her biggest cheerleader and best example.

(Ex. A, Tab 49.) Ultimately, this helped Taylor to understand "how precious life is and how much joy is gained by helping others." (*Id.*)

Mark goes out of his way to help people in need. He has often welcomed friends into his home to help them recover from illness or just to get a break from the stresses of their regular lives. A few years ago, Mark's friend Kathy Virtue's husband had "open-heart surgery and was very ill." Mark offered them his home in South Carolina as "a place to get away and slow down." (Ex. A, Tab 36.) And each year, he opens up his home in Utah to Michele Wanger's family, because their "special-needs son loves to see snow" and to give the children experiences they "otherwise could not afford to do on [their] own." (Ex. A, Tab 38.) He "made a 'bucket list experience' happen for his friend who battled a life-threatening disease by sending him to the Masters Golf Tournament with travel assistance." (Ex. A, Tab 24.) And he gave the "trip of a lifetime for a young boy with terminal brain cancer to meet his hero Coach Urban Meyer and attend an Ohio State Football game." (Ex. A, Tab 45.)

When a friend was unexpectedly laid off, Mark offered him a training position at Pilot, even though it was outside of his career expertise. (Ex. A, Tab 51.) When another friend, Peter Ellis, "experienced a major reversal of fortune," Mark "immediately" sent him \$5,000, "without hesitation." (Ex. A, Tab 44.) Peter describes what that meant to him:

I told him years later that he could give \$5 million now and it wouldn't mean anywhere near as much as that \$5000 did at the time. It literally kept me afloat [sic] long enough to regain my footing. I will always be indebted to him for that. I had absolutely nothing to offer him and was reminded of the saying that the measure of a man is what he does for others from whom he gains nothing.

(*Id.*)

And Mark is generous and compassionate towards strangers as well. Friends have “watched him commit many random acts of kindness such as giving cash to homeless people on the street, [and] giving large tips to young wait staff.” (Ex. A, Tab 35.) He “sincerely helps those less fortunate than him.” (*Id.*) He genuinely cares for the people that he encounters even in passing and takes the time to hear their stories and give them kind words and support. As Mark’s sister put it, Mark “has never known a stranger.” (Ex. A, Tab 2.) Father Mark Haydu describes one example:

On one particular occasion at a restaurant in Columbus, OH he went back in the restaurant as we had already left, because he wanted to say goodbye to the waiter who had helped us during our meal but wasn’t our waiter. . . . When I came out, I saw him talking to the waiter, as I stopped with the two of them Mark was giving her a tip and told her “You just believe, keep at it, everything is going to be all right.” This kind of thing was pretty common. He is just sincerely interested in folks who work hard and struggle for a break to move ahead.

(Ex. A, Tab 52.)

Mark is fundamentally generous in spirit: he is considerate, to a fault, of others’ needs—even when it is bad business. In 2014, Mark invited Darron Ming to join him in a new business venture, the Professional Driver Agency. Part of their agreement was that Darron would move to the Nashville area and run the business from there. But when Mark found out that Darron’s “family was not excited about leaving friends and family to move to Nashville,” Mark decided to “pay to fly [Darron] back and forth as needed” so that he and his family could stay in Arkansas. As Darron notes, this was “frankly a horrible business decision because of the cost, but again Mark was more concerned about me as a person than he was about making money.” (Ex. A, Tab 21.)

Mark does not just write checks. His generosity has not been limited to monetary donations or tangible help. The mark of a truly generous person is to part with that of which you have little. In Mark’s case, that was time. So, even though he was often busy with work obligations, he

devoted considerable time to others. As one friend put it, “Mark is a generous man not only with his finances, or his home but with his time as well.” (Ex. A, Tab 36.)

Again, these acts of kindness are often intimate and personal, and unknown to those in his orbit. Shortly after Taylor Grant, the daughter of Mark’s family friend, arrived in England, where she “didn’t know a soul,” to spend six months studying, she got a message from Mark. Mark and Joanne were on vacation and Mark “wanted to see how [Taylor] was settling in.” (Ex. A, Tab 50.) Although Mark was on a rare vacation with his wife, he invited Taylor to spend “the entire day with the two of them, exploring, eating, and experiencing a portion of the world [she] would have never had the opportunity to see, if it weren’t for Mark.” As Taylor put it: “He is empathetic, thoughtful, generous and compassionate. Even six time zones away, on vacation, I was top of mind.” (*Id.*)

This was not an anomaly. Mark’s friends, family, and acquaintances have always been “top of mind.” “Time, hugs, experiences, help, Mark authentically shares.” (Ex. A, Tab 24.) As recounted consistently in the letters submitted in his support, Mark has always put others’ needs first. He has “time after time open[ed] his home to a young person in need, or to help someone get on their feet again.” (Ex. A, Tab 36.) For example, he “spent four Saturday afternoons on the phone” with Michele Wanger’s daughter while she interviewed him “as part of her middle school project.” Although Mark “barely knew” her at the time, he “wanted her to do well and was committed to making time for her.” (Ex. A, Tab 38.) When his niece Grace, who has autism, comes to dinner at Mark’s house, Mark “makes sure to bring home her favorite snacks from the grocery store and spends hours watching kid’s shows with her.” (Ex. A, Tab 39.)

The effort that Mark expends showing his caring and empathy is boundless. In 2015, Joanne’s father was diagnosed with colon cancer and needed surgery. Faced with his mortality,

he became very depressed and purged himself of many of his belongings. Mark and Joanne flew to visit her parents and, as Joanne's father recovered from surgery, Mark visited him and helped care for Joanne's mother. But Mark also went the extra mile. As Joanne's niece, Catherine, explains, Mark:

helped surprise my grandpa with a home makeover. He personally shopped for items to bring my Grandpa's Italian heritage into their house. He updated features of the home to be safer for my grandmother, who had double knee and hip replacements years earlier. He hung pictures, tested out couches, and put his effort into a labor of love for my grandparents. When my grandpa came home he was so overwhelmed and touched by Mark's thoughtfulness; Mark had made an emptied house into the perfect home for my grandparents.

(*Id.*)

Mark's personal commitment to helping others was never more apparent than in his relationship with Hakeem, a friend of Mark's son, Asa, whom Mark first met when Hakeem was 12. Mark was Hakeem's football coach, but because Hakeem's mother was very ill, Hakeem often "had trouble making it to practice." Mark drove him to practice and drove him home once it was done. Over the years, Mark and Hakeem became "really close," and Mark "was always there to help when things were rough for [him] and [his] mother," even paying for Hakeem to go to private school and buying his mother a car. (Ex. A, Tab 53.) Hakeem writes:

Mark and his family became like family to me. My mother passed away when I was 16, as I was going into my junior year in high school. From then until I graduated, Mark was a huge influence in my life. It was a very difficult time for me, and I spent a lot of time with Mark, Joanne, and Asa, as an escape from the rest of my life. Mark treated me just like family. I stayed at his house whenever I wanted to, sometimes spending days or a week there at a time. I was never uncomfortable being there, I felt like a part of the family and always felt love from him. This was really important to me, especially at that difficult time in my life.

(*Id.*)

These are only some of the many, many examples of Mark's kindness, selflessness, and compassion, as further developed over the course of the letters attached hereto. Mark's "heart is

larger than life.” (Ex. A, Tab 34.) According to one of Mark’s daughter’s childhood friends, “People love to be around Mark partly because of how enjoyable he is to be with, but also because he truly cares about people and when you are with him he lets you know it.” (Ex. A, Tab 54.) As Richard Giecek, Chief Development Officer of the Boys and Girls Club of the Tennessee Valley and President of L5 Foundation, put it, “Mark is an asset to society.” (Ex. A, Tab 45.)

E. Mark’s Devotion to His Faith and His Principles

Faith has been a constant in Mark’s life. As his sister writes, he “is a good Christian and believes in helping others.” (Ex. A, Tab 2.) Mark belongs to a bible study group that meets on Wednesday mornings. Although his home confinement prevents him from attending in person, he still makes an effort to be present via FaceTime. When it is Mark’s turn to host the meeting at his home, he takes the time to make homemade biscuits and gravy for the group. Mark also live-streams sermons from his own church and that of his sister, Jacqueline’s. (*Id.*) It is no surprise that he is considered “the rock of his family and the cornerstone of the faith they share together.” (Ex. A, Tab 7.)

Mark relies on his faith when trying to help others who are experiencing difficult times. When Joanne’s niece Emily was in the hospital, Mark helped the family gain strength through prayer. Thomas Albrecht recounts another example:

During the past few years when I was separated from my wife and ultimately divorced, Mark was there in numerous conversations to encourage me, to pray with me, to talk about scripture, to tell me better days are ahead of me, etc. His encouragement and friendship are clearly highlights from these past few years even in the midst of the greatest disappointment and heartache of my life.

(Ex. A, Tab 1.)

Even Mark’s business associates noted Mark’s commitment to his faith, because he was always “carrying his Bible with him in his overstuffed briefcase.” (Ex. A, Tab 10.) Peter Breazeale, who has known Mark since 2008, notes:

Not only have I known Mark as an employer and friend, but I have spent countless hours with him over the last decade and have been able to observe his countenance and how he interacts with his family, friends, customers and employees. In all cases Mark has shown himself to be a truly generous, gracious and caring person. Mark has a high level of integrity and a strong moral compass. I believe those pillars of his character are the fruit of his deep faith in Jesus Christ.

(Ex. A, Tab 55.)

People who have gone into business with Mark have been influenced to do so by Mark's faith in God. As Isaac Conner, Mark's business partner and attorney for his business interests, explains:

After hearing my thoughts, Mark then began discussing his faith and how important his faith was to his success in business. Mark's faith seemed to be his secret ingredient and he made it clear that doing things the "right way" and for the benefit of our customers and families was paramount. It was clear at the conclusion of our meeting that Mark was the type of person I wanted to be in business with.

(Ex. A, Tab 56.)

Because Mark is grounded in faith and family, there can be little doubt that "[i]f allowed, . . . he would continue to use his life experiences, even this one, as a way to make a positive difference in the lives of others." (Ex. A, Tab 49.)

F. Mark is Tolerant and Respectful to All

A recording played at trial painted a picture of Mark as, at best, intolerant of others, and, at worst, a racist. But—as his friends, family, and associates attest—the opposite is true. His step-daughter, Parker, explains:

People look in on our family from afar, and it doesn't always make total sense. As you likely assume, we are a blended family. I am the only child from my mother and biological father. My biological father is an openly gay man who is in a committed relationship. I have an excellent relationship with my father and his partner. From day one, Mark has never expressed judgment. In fact, he has been nothing but supportive and encouraging. When my mom began her relationship with Mark, she established that my happiness would always come first. All sides of my family shared holidays all together, birthdays, and special occasions.

(Ex. A, Tab 30.) Parker's father, Steve Williams, agrees. The revelations of the tapes at the trial

upset him as “an openly gay man . . . in a committed relationship with a[n] African American partner . . . , but it doesn’t change [his] perception of the person Mark Hazelwood is.” As Steve put it, Mark “is a kind person who cares for many aspects of human life. He has never expressed judgement towards me or my partner, Fitz.” (Ex. A, Tab 57.)

It is not only Mark’s family who attest to this. Mark’s neighbor and friend, Professor Firouz Shahrokhi, a first-generation immigrant from Iran, has “seen many, many prejudice elements in [his] lifetime,” including having a cross burned on his front lawn and having his cars vandalized. As Dr. Shahrokhi writes, “I was a victim of prejudice. I can smell it miles away. Mark does not have a single bone of prejudice in his body. He is full of kindness seldom seen in people these days.” (Ex. A, Tab 58.) Isaac Connor, an attorney who has known and worked with Mark for ten years, explains that:

[My] firm has been in existence in Nashville for 41 years . . . representing predominately Black interests . . . Our firm believes in justice for all and believes in the Equal Protection Clause of the U.S. Constitution to arguably be the most important protection we have as African-Americans . . . Mark’s derogatory statements were offensive and disappointing. However, those drunken comments are not at all representative of the man I have come to love and respect. I have always felt that actions speak louder than words. Mark’s actions have always proven to me that there is no malice in his heart towards African-Americans. I cannot allow one regretful episode to redefine who I know Mark to be.

(Ex. A, Tab 56.) The true measure of Mark’s unbiased character is further exemplified by his relationship with Hakeem, a young man whom Mark “treated . . . just like family” when Hakeem’s mother was sick and ultimately passed away. Hakeem writes that “[e]ven though the language Mark used was offensive, people sometimes say things that they don’t mean and I know Mark wishes he could take those words back. The words he used on that tape do not reflect the person that I have known, who took me (a black man) into his family and was a father figure to me.” (Ex. A, Tab 53.)

At bottom, Mark has “a heart” for “the disadvantaged, for minorities, for those whose backgrounds were difficult, but who were also overcomers. Despite the tape, and however hard it may be to reconcile, Mark’s unbiased nature is genuine and well recognized. Mark sees the potential in everyone, regardless of race, religion or socio-economic background.” (Ex. A, Tab 1.) He “will share or give anything he has to anyone.” (Ex. A, Tab 24.)

III. CONCLUSION

We hope that this gives the Court a more complete picture of who Mark really is. As we discuss in the Motion for a Downward Variance, we ask the Court to ensure that Mark’s punishment “fit[s] the offender and not merely the crime,” *Pepper v. United States*, 562 U.S. 476, 487–88 (2011) (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)), and sentence this “giant of a human being” in a way that will allow him to continue to do good—for his family and friends, for truckers, for his community, for children, for the sick, and for complete strangers—just as he has done throughout his entire life.

/s/ Jim Walden

Jim Walden
Georgia Winston
WALDEN MACHT & HARAN LLP
One Battery Park Plaza, 34th Floor
New York, New York 10004
(212) 335-2030
jwalden@wmhllaw.com
Attorneys for Defendant Hazelwood

/s/ Bradley L. Henry

Bradley L. Henry (BPR # 025447)
BREEDING HENRY BAYSAN PC
900 South Gay Street, Suite 1950
Knoxville, Tennessee 37902
(865) 670-8535
bhenry@bhblegal.com
Attorneys for Defendant Hazelwood